

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of the)
)
Rules and Regulations)
Implementing) CG Docket No. 02-278
)
the Telephone Consumer)
Protection)

Act of 1991

**Written Ex Parte Communication of Joe Shields on Chairman
O’Rielly’s Claim that the Definition of Autodialer is Too
Broad and Sweeps in Cell Phones.**

I hereby submit this written ex parte communication in opposition to Chairman O’Rielly’s mistaken beleif that the current Commission definition of autodialer is too broad and erroneously sweeps in cell phones. Chairman O’Rielly is grossly misguided. Cell phones can and are being used as autodialers and the current definition of autodialer is accurate when it includes cell phones.

For example, I recently filed a complaint with the Commission where Dialing Services, a company cited and fined by the FCC¹, where a cell phone was used to connect to the autodialer and set up an autodialed campaign.

¹See: In the Matter of Dialing Services LLC, FCC File Number EB-TCD-12-00001812, Citation DA 13-265, March 15th, 2013 and Notice of Apparent Liability, FCC 14-59, May 8th, 2014.

A little research would show Chairman O’Rielly just how misguided he is. A goggle search on “Android autodialer” or “SIM Dialer” results in dozens of applications that use turn a cell phone into an autodialer or use cell phone SIM cards to configure a computer to become an autodialer.

One of the Android autodialer apps is MobileCTI, which is sold through the google app store². On the google app store page it states that the MobileCTI app is capable of: “Sales/Campaign tool for making automated outbound calls”. A screen capture of the google app store page is attached.

Another application that converts a cell phone to an autodialer is Call Center Pro³ which states that one can: “Turn your Android device into a Mobile Call Center with the functionality to automate your campaigns.” A screen capture of the mycallcenter app.com web page is attached.

I admit that the Commission got the definition of autodialer wrong. The TCPA is clear on what constitutes an autodialer. Due to the occurrence of two disjunctive prepositions “store or produce” in the sentence “to store or produce telephone numbers to be called, using a random or sequential number generator” the “...using a random or

² See <https://play.google.com/store/apps/details?id=com.mobilepowerdialer&hl=en>

³ <http://www.mycallcenterapp.com/>

sequential number generator." modifies only the production of numbers and not the preceding "storage" disjunctive.

"Under the 'rule of the last antecedent,' which provides that, where no contrary intention appears, a limiting clause or phrase should be read as modifying only the noun or phrase that it immediately follows..." *Levy v. Receivables Performance Mgmt. LLC*, --- F.Supp.2d---, 2013 WL 5310166 (E.D.N.Y. Sept. 23, 2013).

Thus, the capacity to store numbers or the capacity to produce numbers are two separate conditions. Either condition not both conditions combined properly defines the capacity of an autodialer.

Consequently, I respectfully request that Chairman O'Rielly do some research on cell phone autodialers before rejecting a definition of autodialer that sweeps in cell phones. Surely, Chairman O'Reilly must admit that cell phones today are mini computers that have the same capabilities of desktop computers that are used as autodialers.

Commissioner O'Rielly must not be naïve and allow himself to be deceived by the misrepresentations made by banks, debt collectors, health care providers, electricity providers, educational providers and their associations in their petitions and comments. These industries do not now

nor have they ever represented the interests of consumers.
Their motives are for their own avaricious interests and
not the interests of the consumer!

Respectfully submitted,

_____/s/_____
=====

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<https://play.google.com/store/apps/details?id=com.mobilepowerdialer&hl=en>

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MOBILCTI

MobilCTI Auto Power Dialer

Can Tech Holdings LLC DBA MobilCTI Business

Unrated

Add to Wishlist \$4.99 Buy

MobilCTI Power Dialer

Please select the outcome of this call:

Campaign: Weekly Leads Sample

Customer Name: Mary Thomson

Phone: 405101753 805101700

Company Name: Thomson Inc

Answered Save Phone Num

No Answer Yes Mail

Busy Fax/Modem

Error / Wrong Number

Do Not Call

MobilCTI Power Dialer

MobilCTI Power Dialer for Android

Create/Edit Campaigns and Contacts

Launch Campaign

Manage Do Not Call list

Settings

Reports

Help

App Version: 1.0

© MobilCTI 2010

Each country has laws governing outbound calling.

MobilCTI Power Dialer is a powerful, simple and effective unified Sales/Campaign tool for making automated outbound calls, SMS and Email. Pay just \$4.99 one time. No monthly fee.

****Satisfaction Guaranteed!**** If you are not satisfied with Mobile CTI power dialer, contact us within first one hour of purchase, we will refund your purchase. Only one return per user id is allowed.

READ MORE

Sales/Campaign tool for making automated outbound calls

<http://www.mycallcenterapp.com/>

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The Best Predictive Power Dialer for Android Mobile

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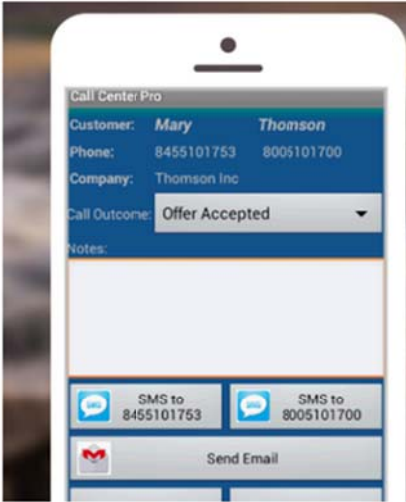
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Call Center Pro is the premiere predictive Power Dialer app comprehensive Customer Relations Management (CRM) software application for your mobile phone. Turn your Android device into a Mobile Call Center with the functionality to automate your campaigns. Maximize productive time working quality leads and less time with dialing errors and fax machines. SMS Template campaigner, and email campaigner. [\[Read More\]](#)

Call Center Pro Tutorial

Turn your Android device into a Mobile Call Center with the functionality to automate your campaigns

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